

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 94-254
(Reopened)

June 4, 1998

PUBLIC UTILITIES COMMISSION
Request for Commission Action to
Investigate the Level of Revenues
Being Earned by NYNEX and
Determination of Whether Toll and
Local Rates Should Be Reduced

PROCEDURAL ORDER

I. INTRODUCTION

On April 21, 1998, the Commission issued an order reopening this docket to reconsider how to treat funds that may not be expended by Bell Atlantic on behalf of schools and libraries. The Order asked interested parties to file comments by May 4, 1998. Bell Atlantic requested the comment deadline be extended to May 18, 1998. The Hearing Examiner granted that extension by Procedural Order issued on April 29, 1998. The Commission subsequently received more than 150 comments from Bell Atlantic ratepayers and individuals representing various schools, libraries and organizations.

The Commission will hold a hearing on July 1, 1998, to receive further comments. This Order 1) explains why the Commission reopened this docket; 2) summarizes selected written comments received; 3) solicits additional comments on certain questions, and 4) describes the purpose of the hearing and the hearing procedures.

II. REOPENED DOCKET NO. 94-254

The comments of some parties indicate that there may be a misunderstanding about the Commission's original order in Docket No. 94-254 and the Commission's reasons for reopening this docket. This section briefly describes the original order and our decision to reopen the order, so that all original parties and interested persons understand what the Commission intends to accomplish in this reopened proceeding.

A. Docket No. 94-254 Order May 15, 1995

In Docket No. 94-254, the Commission conducted an investigation to determine the proper level of earnings and revenues for Bell Atlantic-Maine (then known as New England Telephone Company d/b/a NYNEX). In a companion case, the Commission considered whether to institute an alternative method

for regulating Bell Atlantic's rates. *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123. The Commission concluded both cases simultaneously, with the revenue requirements findings (determined in 94-254), serving as the starting point for the Alternative Form of Regulation (AFOR) adopted by the Commission in 94-123. The Commission found that an annual revenue decrease in the amount of \$14,446,000 was warranted. The Commission required Bell Atlantic to change its rates in order to decrease its annual revenues by \$10.446 million and to use the remaining \$4 million of the revenue decrease to "reduce rates and/or provide additional services or equipment to Maine's schools and libraries." Docket No. 94-254, May 15, 1995 Order at 58. The Commission directed Bell Atlantic to begin accruing \$333,333 per month for this purpose beginning June 1, 1995. The Commission also directed Bell Atlantic in consultation with interested persons, to develop a proposal for spending the school and library money. *Id.* at 59.¹

After receiving Bell Atlantic's proposal and comments from other parties, the Commission adopted a plan on January 5, 1996. The plan provided for a free 56kbps connection to the Internet for Maine's schools and libraries along with basic training and computer grants. To address the concern that "one size might not fit all," a school or library desiring a higher speed or different type of connection to the Internet could apply to receive funding equivalent to the cost of the 56 kbps connection. The Commission determined that Bell Atlantic's "costs" would be measured as its incremental (out-of-pocket) costs. The Commission also directed Bell Atlantic to continue to accrue \$333,333 per month through May 31, 2000. The commission stated: "[w]e do not presently anticipate that this source of funding will be renewed after the 5-year term. Accordingly, schools and libraries should plan for their own funding of these services and equipment after that time." Docket No. 94-254/94-123, January 5, 1996 Order at 20.

As explained in the Commission's Order reopening this docket, by December 31, 1997, virtually every eligible school and library desiring a connection to the Internet had received a

¹ Some commenters described these earlier proceedings as an "agreement" that the Commission should honor. The Commission ordered Bell Atlantic to undertake certain activities following adjudicatory proceedings. These issues were not resolved by stipulation or agreement. The Commission has the statutory authority to rescind, alter or amend any of its orders. 35-A M.R.S.A. § 1321.

56kbps connection or the equivalent value to purchase an alternative connection.²

B. Purpose of Reopened Docket

The Commission reopened this docket to explore options for dealing with funds that may not be needed to achieve the original purpose of the project: "to provide schools and libraries a minimum level of connection to high capacity services at the lowest possible cost to NYNEX's [Bell Atlantic's] customers." Docket 96-900, May 16, 1996 Order at 3. Bell Atlantic, as of May 30, 1998, has accrued \$11,999,988 from its ratepayers. Bell Atlantic projects that the school and library project as currently designed and implemented will cost Bell Atlantic \$9,474,273. Therefore, the Commission must make a determination about the funds that are being set aside that may not be necessary. The Commission's May 1995 order stated: "If NYNEX's ultimate proposal uses only a portion of the \$4.0 million [per year] to support services to schools and libraries, then the remaining portion must be used for toll reductions." This docket was reopened to determine whether the Commission's earlier decision to use unspent funds for toll reductions is appropriate in light of current circumstances. There is no intent to terminate the current program before May 2000.

Bell Atlantic's comments reflect a misunderstanding of the Commission's original order and the purpose of this proceeding. As explained above, the Commission found that Bell Atlantic was overearning by \$14 million. Therefore, Bell Atlantic was directed to reduce its revenues by \$14 million at the start of the AFOR. This was done by reducing rates by \$10 million and requiring Bell Atlantic to upgrade its services to schools and libraries with the remaining \$4 million.

Bell Atlantic claims that although excess revenues may have existed in 1995, reductions in Bell Atlantic's toll and access rates that have occurred since that time have exceeded any amounts designated for schools and libraries or for prospective toll reductions, so no further reductions are necessary. Bell Atlantic misunderstands that the Commission removed \$20 million of revenues through May 2000 (ie., \$4 million for each of five years) from use by Bell Atlantic. The Commission found this amount to exceed levels that were just and reasonable. Intervening events have no relevance to that finding. In fact,

² As of December 31, 1997, 706 public schools, 84 private schools, 20 alternative schools, and 295 libraries were connected. Of these, 118 chose to receive alternative equivalent funding (AEV). 73 AEV sites chose 10 mbps speeds using cable modems. The remaining 44 chose ISDN, T-1 or other connections through a local telephone provider other than Bell Atlantic. The project also offered every library a free phone line; 241 have been installed.

the recent stipulation approved by the Commission, to which Bell Atlantic is a party, made certain changes to the AFOR, but did not address the appropriate ratemaking disposition of any potential surplus in the escrow account for schools and libraries. The stipulation specifically stated that nothing in the stipulation affected the Commission's jurisdiction over the use of those funds and their ratemaking disposition prior to the expiration of the AFOR. Docket No. 94-123 (Reopened) (March 12, 1998). Bell Atlantic statements that a "surplus" no longer exists due to intervening events is meaningless. The Commission is not here reconsidering its original revenue requirement decision of May 1995. Instead the Commission is seeking comments on the use of the funds for schools and libraries, and if all the funds are not used for that purpose, it is seeking comments on the proper rate design of the rate reduction.

C. Comments Received

Some commenters, including the Public Advocate and AARP, agreed with the suggestion in the Commission's April 21 Procedural Order to return any excess funds as a reduction in basic rates. The Maine Chamber and Business Alliance supported keeping any reduction on toll rates.

At least ten commenters asked that the funds be used for new purposes such as connecting legislators or senior citizens centers to the Internet. The Telephone Association of Maine asked that any excess be held for "future telephony revenue deficiencies." The Commission is not considering new purposes for the funds beyond directing funds to benefit schools and libraries or reducing rates for other Bell Atlantic customers, as contemplated in its original order.³

Other commenters suggested that the Commission begin an investigation into whether a state telecommunication access fund similar to the federal funding of the E-Rate is necessary, as authorized by 35-A M.R.S.A. § 7104-A (1)(c).

The majority of comments received from individuals and organizations representing school or library interests asked the Commission to spend any remaining funds to support additional training, computers, and higher speed connections for schools and

³ One commenter suggested excess funds be used to connect superintendents' offices to the Internet. The Commission previously decided that access was to benefit students and library patrons. The Commission did permit superintendents to pay for their own connections but allowed them to use the MSLN backbone for free. *Public Utilities Commission, NYNEX School and Library Project*, Docket No. 96-900 (Nov. 7, 1996). The Commission understands that all superintendents currently have Internet access.

libraries. The Maine Telecommunications Users Group also supported continued use by schools. Some commenters made specific suggestions on how the funds should be used. These comments are summarized in the next section, followed by a series of questions for which the Commission seeks additional comments.

D. Specific Suggestions/Additional Questions

1. Assistance Filing E-Rate Applications

The Commission's order reopening this docket suggested that the Federal E-Rate program could complement the MSLN project by providing discounts for more advanced services. According to a number of commenters, some Maine schools and libraries did not file federal E-Rate applications due to complexities associated with the application process. The Commission understands that the State Library and Department of Education have designated certain staff members to assist in this process (See www.state.me.us/msl/erate.htm). One commenter suggested funds could be used to further assist schools and libraries with the application process.

a. What type of assistance is currently available?

b. What additional assistance is needed?
Why?

c. Who could provide the assistance and how much would it cost?

2. Upgrade of Sites with Demonstrable Need

Many commenters suggested that any remaining funds be used to pay for higher speed connections to the Internet. Some argued the Federal E-Rate discounts were not sufficient or the E-Rate program was too new to know whether it will benefit Maine's schools and libraries. Some commenters also expressed a concern about slow speeds on the Internet. Our School and Library Advisory Board has been examining the speed issue over the past five months. It appears there are myriad reasons why speeds may be slow. The Board has learned that more than sufficient capacity exists in the MSLN backbone provided through the University of Maine. The University examined sites that had complained of slowness and found that complaints were due to everything from inadequate inside wiring, and out-of-date software, to misuse of a school website that was overloading its connection with incoming traffic. There are, however, some sites that during some part of the day are fully using their 56 kbps capacity. The University is encouraging sites to better manage

their traffic to free up capacity. There are also speed problems beyond Maine's borders that cannot be controlled by MSLN.

One commenter suggested a "swat team" approach may be useful. Funds could be used to pay for 1-2 technicians to visit individual sites to customize solutions to perceived problems.

- a. Would such a swat team be useful?
- b. How should it be arranged?
- c. Should its costs be borne entirely by Bell Atlantic? Or should costs be shared?

3. On-site Training

Although the project has already allocated \$815,000 for training over the past 2 years and trained representatives of schools and libraries between September 1996 and 2492 (with an additional projected trained by September 1998), a number of commenters continued to request additional training, particularly training customized to a site's individual needs. The current training is offered at specific locations requiring travel and in some instances release time from work.

- a. Please comment on whether one or more time full-time trainers "riding a circuit," visiting individual sites, would be useful.
- b. Since training can be virtually unlimited (ie., everyone can always learn more), which basic competencies should be available at each site before this project ends, and for how many people?

4. Reduction in Rates

Some commenters opposed reducing basic rates as opposed to toll rates with excess funds.

- a. Could the Commission reduce toll rates by expanding or changing basic calling areas? How?
- b. If the Commission reduces basic rates, how should the reduction be apportioned

between business and residential customer classes?.

III. PROCEDURES

As described above, the Commission received many suggestions on how additional funds might be spent to benefit schools and libraries. The Commission also heard from some opposed additional spending. To take additional comments and to further explore some of these suggestions, the Commission will hold a hearing on July 1, 1998, beginning at 9:00 a.m. in the Commission's Hearing Room, 242 State Street, Augusta Maine. Interested persons may file written comments on the questions listed above, by June 24, 1998. Anyone wishing to be heard orally must submit a prehearing memorandum no later than June 26, 1998. The memo should list the name of the intended witness, the specific subject(s) to be addressed and a time estimate for the presentation. Witnesses are encouraged to consolidate their oral presentations.

A prehearing conference will be held on Monday, June 29, 1998 at 2:00 p.m. in the Commission's Hearing Room to deal with any procedural issues and to discussing the witness schedule for the hearing. Time limits and consolidation of witnesses may be required so that everyone desiring to speak may do so.

Persons who wish to participate in either the prehearing conference or hearing by telephone, should contact Debby Pushard (287-1566) by June 26, 1998. Persons with real-time audio capabilities can also listen to the hearing through the Commission's website. Please see the Commission website later this month for further details.

All parties to the original Docket No. 94-254 will continue to be considered parties to this proceeding.⁴ Any party not desiring to participate in this reopened docket should contact

⁴ Office of the Public Advocate; Department of the Secretary of State; Neighborhood Action Coalition of Greater Portland; Maine Association of Independent Neighborhoods; American Association of Retired Persons; Pine Tree Telephone and Telegraph Company; Hartland & St. Albans Telephone Company, Island Telephone Company, Somerset Telephone Company, and Warren Telephone Company (TDS Companies); MCI Telecommunications Corporation, AT&T Communications of New England, Inc., Sprint Communications Company L.P., Time Warner Communications, New England Television Association, Maine Telecommunications Users Group; Frederic A. Pease; U.S. Cellular Operating Co. of Bangor, Inc., Lewiston Cell Tel Co., Maine RSA #1, Inc., Maine No. 2 Cellular Telco, Inc., and Maine RSA #4 Limited Partnership; George Romoser; Department of Education, Maine Library Association, Maine Educational Media Association and Maine Library Commission. The Maine Community Action Network was also a party to Docket 94-254. We were unable to find

the Commission's Administrative Director and ask that its name be removed from the service list. All persons who filed comments have been added to the interested person service list. A copy of this Procedural Order is being sent to all parties and interested persons.

Dated at Augusta, Maine this 4th day of June, 1998.

BY ORDER OF THE HEARING EXAMINER

JOANNE B. STENECK

its address for purposes of mailing this order.